

STATE OF INDIANA) MARION COUNTY CIRCUIT/ SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

SIMON PROPERTY GROUP, L.P.,)
on behalf of itself and its affiliated)
landlord entities,)

Plaintiff,)

V.)

BROOKS BROTHERS GROUP, INC.

Defendant.)

COMPLAINT FOR DAMAGES

Plaintiff Simon Property Group, L.P. (“Simon”), on behalf of itself and as assignee of its various landlord entities (“Simon Landlords”), for its Complaint against Brooks Brothers Group, Inc. f/k/a Retail Brand Alliance, Inc. (“Brooks Brothers”) alleges and states as follows:

NATURE OF THE ACTION

1. Simon seeks monetary damages from Brooks Brothers for its failure to pay more than \$8.7 million in rent and other charges due and owing under certain retail Leases (defined below) plus attorneys' fees, interest, and expenses incurred in connection with this suit.

2. Brooks Brothers is in default under each of the Leases for failure to pay rent and other charges, including applicable rent for April, May, and June 2020. As of the date of this filing (June 17, 2020), there is due and owing approximately \$8.7 million in unpaid rent and other charges to the Simon Landlords. The amounts due and owing will continue to accrue each month, with interest, and Brooks Brothers is expected to fall even further behind in rent and other charges due to be paid to the Simon Landlords.

PARTIES, JURISDICTION, AND VENUE

3. Simon, a Delaware limited partnership, is the principal operating partnership for Simon Property Group, Inc., a publicly-held Delaware corporation and Simon's sole general partner. Simon is in the business of operating commercial real estate throughout the United States.

4. Each individual retail property is typically owned by a separate single purpose landlord entity in which Simon has either a direct or indirect controlling interest. Pursuant to a June 17, 2020, Omnibus Written Consent, Grant of Power of Attorney & Assignment of Claims, each of the Simon Landlords has: (i) irrevocably appointed Simon as its attorney-in-fact with full authority to take any action with regard to the claims brought in this suit; (ii) authorized and directed Simon to bring this suit, without the involvement of the Simon Landlords; and (iii) assigned the title to and ownership of the claims brought in this suit. Simon is headquartered in Marion County, Indiana. Simon manages and directs the operation of Simon's commercial real estate properties and administers the Leases from its Marion County, Indiana headquarters.

5. Brooks Brothers is a tenant at retail properties owned or operated by Simon and its affiliates throughout the United States – including in Indiana – pursuant to lease agreements (the "Leases") with the respective Simon Landlords.

6. Brooks Brothers is a Delaware corporation with its principal place of business in New York. Previously, Brooks Brothers was known as Retail Brand Alliance, Inc. The entity formerly known as Retail Brand Alliance, Inc. filed paperwork with the Delaware Secretary of State changing its name to Brooks Brothers Group, Inc. on or about August 8, 2011.

7. Brooks Brothers is registered with the Indiana Secretary of State to conduct business in Indiana. Brooks Brothers operates retail stores throughout the United States and is a tenant in the Simon retail properties listed in **Exhibit 1** to this Complaint, including, but not limited

to, the Fashion Mall at Keystone in Marion County, Indiana and the Lighthouse Place Premium Outlets in La Porte County, Indiana.

8. Prior to and during the term of the Leases, Brooks Brothers communicated with Simon and the Simon Landlords in Indianapolis regarding the Leases, including communications concerning rent and other amounts due under the Leases. Brooks Brothers further negotiated leases, renewals or other amendments to a number of the Leases directly with Simon and the Simon Landlords in Indianapolis. Brooks Brothers engaged in communications and activities directed towards Indiana that give rise to this dispute, making Brooks Brothers subject to Indiana's regulation and subject to suit in Indiana.

9. This Court has personal jurisdiction over the parties. This Court also has subject matter jurisdiction over this action.

10. Venue is proper in this Court pursuant to Indiana Trial Rule 75.

FACTUAL BACKGROUND

11. Attached as **Exhibit 1** is a schedule of the Leases between Brooks Brothers and the Simon Landlords. Both Simon and Brooks Brothers have complete copies of the Leases at issue in this action. Each of the Leases was entered into for good and valuable consideration, and the Leases are valid and enforceable contracts.

12. Pursuant to the terms of each Lease, Brooks Brothers was required to pay rent and other charges on the first day of the month. Brooks Brothers further agreed in each of the Leases that any failure to pay rent and other charges when due, if not cured within the required time, would constitute a default and breach of the Lease entitling the Simon Landlords to collect interest and other amounts in addition to the unpaid rent or other charges, including costs of suit and reasonable attorneys' fees, as well as to exercise other remedies for Brooks Brothers' default.

13. Brooks Brothers failed and refused to make payment for rent and other charges due for April, May, and June 2020 pursuant to the terms of the Leases. Simon provided written notice to Brooks Brothers that it had failed to pay the then-due rent and other charges on April 15, 2020, and May 28, 2020. In its notices, Simon demanded immediate payment of amounts due and owing under the Leases.

14. On or about March 28, 2020, Brooks Brothers wrote Simon, stating that it was refusing, and would continue to refuse, to pay rent and threatening to close its stores in Simon's shopping centers permanently.

15. As of the date of filing of this Complaint (June 17, 2020), Brooks Brothers remains in default under the Leases despite receiving written notice and opportunity to cure, and it continues to refuse to pay the past due rent and other charges.

16. The applicable notice and cure period under each of the Leases has expired. Further, any requirement to provide Brooks Brothers with a notice of breach and opportunity to cure has been satisfied, waived by the nature of Brooks Brothers' conduct, or does not apply.

17. In further breach of its contractual obligations, Brooks Brothers is holding over beyond the term of the applicable Leases without making holdover rent payments to the Simon Landlords.

18. Simon has suffered in excess of \$8.7 million in damages as a result of Brooks Brothers' willful and repeated breaches of their payment obligations. That amount will continue to grow as unpaid rent, holdover rent, and other charges, costs, and fees accrue.

COUNT I
BREACH OF CONTRACT

19. Simon incorporates paragraphs 1 through 18 as if fully set forth herein.

20. Brooks Brothers failed and refused to timely pay all rent, holdover rent, and other charges due and owing to the Simon Landlords at the time such payments were due, each of which constitutes a material breach and default under the applicable Leases.

21. The Simon Landlords have not excused or waived Brooks Brothers' breaches. Any provision in the Leases requiring Brooks Brothers to have an opportunity to cure the defaults has been satisfied or would be futile based on the prior history between the parties and Brooks Brothers' repeated and intentional violations of the Leases. The requirement that Brooks Brothers timely pay rent due under the Leases has not been excused.

22. The total amount of rent and other charges owed by Brooks Brothers currently exceeds \$8.7 million, excluding holdover rent amounts to be determined at trial. In addition to the unpaid rent and other charges due and owing under the Leases, and such additional unpaid rent, holdover rent, and other charges that may accrue hereafter, Simon is also entitled to recover interest, plus its costs, expenses, and attorneys' fees incurred in enforcing the terms of the Leases.

WHEREFORE, Simon respectfully requests that the Court: (1) enter judgment in its favor and against Brooks Brothers on Count I of the Complaint; (2) award Simon damages in an amount to be determined at trial; (3) award Simon its costs and attorneys' fees in maintaining this action, along with applicable pre-judgment and post-judgment interest; and (4) award Simon all other just and proper relief.

Dated: June 17, 2020

Respectfully submitted,

/s/ Andrew J. Detherage

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